93-664

CASE NO. 93-1144

Supreme Court, U.S.
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IN THE

# Supreme Court of the United States

October Term, 1993

ZITA KING KIRATLI and
DUNDAR OZEY,

Petitioners,

v.

ERSAN RESOURCES, INC. and
ERHAN OZEY,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

## RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED FOR REVIEW

I. Was the United States Court of Appeals for the Fourth Circuit correct in dismissing an appeal, after both the district court and the court of appeals found petitioners in continuing contempt of a previously issued injunction which was a subject of the appeal?

II. Was the United States Court of Appeals for the Fourth Circuit correct in dismissing the appeal of Zita King Kiratli after dismissing the appeal of Dundar Ozey because she was only a nominal party and not a real party in interest?

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## STATEMENT OF THE CASE

This case arises out of a dispute over the ownership of a yacht named the ERSAN originally owned by petitioner Dundar Ozey ("Dundar"), but later conveyed to a family corporation respondent Ersan Resources, Inc.[1] ("Ersan Resources"), an Oklahoma corporation, now solely owned by respondent Erhan Ozey ("Erhan"), the son of Dundar.

The ERSAN was purchased in the United States by Dundar in 1985 and documented as a U.S. flag vessel with the Coast Guard in Norfolk, Virginia. In order to subvert the documentation laws of the United States, Dundar had the yacht titled in the name of petitioner Zita King Kiratli ("Zita"), the

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[1] Ersan Resources, Inc. has no parent or subsidiary companies. Rule 29.1.

wife of his cousin living in Baltimore, Maryland. The statutes and regulations clearly prohibit a foreign individual from owning a U.S. documented vessel. 46 USC §§12102, et seq., 46 CFR §67.01-9, 46 CFR §67.03, et seq.

Zita promptly gave Dundar a full power of attorney to use the yacht, including a power to sell same. Zita testified that Dundar was the real owner and she was simply a "paper figure" or "titular owner." (A-3)

In 1989 the ERSAN was sold by Dundar to an English corporation Orada Limited at which time Zita advised the Coast Guard to cancel the vessel's documentation. (A-41)

Also in 1989, Dundar requested his son Erhan to form a U.S. corporation into which Dundar would convey a new

yacht in exchange for shares of stock. Ersan Resources was then formed and became the owner of a yacht contributed by Dundar in exchange for 20% of the shares of stock, the remaining 80% being owned by Erhan's wife Margaret. (A-41 - A-42) In 1990, the first yacht was swapped for the ERSAN which was conveyed to Ersan Resources by Orada Limited, and thereafter documented under U.S. flag with the Coast Guard in St. Louis, Missouri.

In 1992 Erhan acquired all of the stock of Ersan Resources, after which Dundar commenced efforts to obtain possession and ownership of the yacht ERSAN then located in Kusadasi, Turkey. He persuaded Zita in May of 1992 to have the yacht ERSAN redocumented in her name with the Coast Guard in Norfolk, by

falsely telling the Coast Guard that the sale of the vessel three years earlier had not gone through. (A-68)

Because the yacht was now documented in two different Coast Guard districts, St. Louis and Norfolk, under two different registered owners, Ersan Resources instituted the present action on June 19, 1992 requesting a declaratory judgment to determine the correct owner of the vessel and further asking that an injunction be issued against Zita (and later against Dundar after an amended complaint was filed) prohibiting any interference with Ersan Resources' title and possession of the vessel. The complaint alleged admiralty jurisdiction, 28 USC §1333, federal question jurisdiction, 28 USC §1331 and diversity jurisdiction, 28 USC §1332, further

asking for a determination of ownership under the Declaratory Judgment Act, 28 USC §2201, et seq.

On August 10, 1992 Zita was found in contempt of a preliminary injunction for assisting Dundar in Turkish litigation seeking control of the yacht there. She has paid the damages assessed against her and has made no appeal of this contempt finding or of the damages that she paid. It is noted that both Dundar as well as Ersan Resources obtained preliminary injunctions prohibiting either side from continuing litigation in Turkey until the case could be decided on the merits.

After a four day trial the district court issued its opinion on January 15, 1993 upholding Ersan Resources' right to title and possession of the vessel and

permanently enjoining the petitioners Dundar and Zita from interfering with said rights. It should be noted that no money damages were awarded, only injunctive relief.

Neither petitioner filed any supersedeas bond or filed any motion to stay the injunction pending appeal. Instead the petitioners immediately sought to take action in the Turkish court at Kusadasi in complete violation of the injunction issued against them. Thereafter Dundar appeared in person and by counsel at the Basic Civil Court in Kusadasi on April 21, 1993 asserting that the United States judgment was invalid and asked for the yacht to be turned over to him. Although the Turkish court did not immediately act it did require Ersan Resources to post a

large cash bond of some $89,000.00 plus payment of other expenses pending a decision.[2]

This forced Ersan Resources to request a contempt hearing before the district court in Norfolk. Although Zita purged herself of contempt by withdrawing from the Turkish proceedings, Dundar refused to do so and was found in contempt at a hearing on May 13, 1993 and fined $1,000.00 per day until he purged himself of contempt.[3]

Because the contempt citation of the district court was ignored by Dundar

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[2] That court on August 25, 1993 ruled that Ersan Resources did in fact own the vessel, but petitioner Dundar has appealed that ruling.

[3] He still remains in contempt as of this writing.

who remained in Turkey, Ersan Resources asked the court of appeals to dismiss the appeal of Zita and Dundar unless they discontinued their contumacious conduct.

After the court of appeals gave Dundar ten days to purge himself of contempt, it dismissed his appeal by order of July 8, 1993 when he advised the court that he refused to withdraw from the Turkish proceedings. Thereafter following briefs, the court likewise dismissed Zita's appeal by order of July 20, 1993 since it found that Zita was only a nominal party and that her claim rested entirely on that of Dundar, the real party in interest.

It is noted that while Zita and Dundar appealed the district court's order and injunction of January 15,

1992, they did not appeal the contempt findings of the district court.

## ARGUMENT

### Summary of Argument

There are no proper grounds for granting a writ of certiorari under Rule 10 of the Supreme Court Rules or otherwise. The decision of the court of appeals does not conflict with any decision of another United States court of appeals, a state court of last resort or of any decision of this Court. There is no important question of federal law to be decided under the facts of this case since the dismissal of an appeal by one in open defiance of a lower court's injunction has not only been sanctioned by this Court, National Union of Marine Cooks & Stewards v. Arnold, 348 U.S. 37, 75 S.Ct. 92, 99 L.Ed. 46 (1954), but is

the majority view in this country. 17 Am. Jur. 2d, Contempt §226, p. 578.

Likewise since Dundar seeks to obtain the yacht ERSAN as his sole property and had only utilized Zita to hold a purported paper title to the vessel, the dismissal of Dundar's appeal necessitated the dismissal of Zita's since she is only a nominal party who has no independent claim to this vessel. Her appeal did not involve any money judgment, only the injunction prohibiting her from interfering with Ersan Resources' title and possession of the vessel.

I. Since the Fourth Circuit Court of Appeals' decision in dismissing the appeals follows generally accepted law and is in conflict with no decision of this Court or other circuits there are no proper grounds for granting certiorari.

This case simply involves a dispute

over ownership of a boat and is of little import other than to the parties involved. When petitioners lost their arguments in the district court and were enjoined from interfering with Ersan Resources' rights to the vessel, they never sought to post a supersedeas bond to stay the proceedings pending appeal, Rule 62(d), Federal Rules of Civil Procedure, nor did they file a motion to stay the injunction pending appeal, Rule 62(c), Federal Rules of Civil Procedure, but elected to proceed in the Turkish courts to retry the issue of the vessel's ownership in face of the injunction prohibiting this conduct. The petitioners therefore were not without legal remedies to stay the injunction pending their appeal, but simply chose not to exercise them.

Petitioner Dundar having no property in the United States and remaining in his native country of Turkey, felt that he was outside the power of the United States courts to prevent him from obtaining the vessel in Turkey despite the injunction against him. Thus, his disregard of the mandates of both the district court and the court of appeals did in fact "show a determined effort to deprive the court of power to execute its mandate (i.e.) ... an undisputed, studied, and successful attempt to render the court powerless to enforce its decree." In re Feit v. Drexler, Inc., 760 F.2d 406, 413 (2d Cir. 1985). Petitioner Dundar while asking the United States courts for their assistance in his appeal, at the same time displays his utter contempt for the

orders of these courts by his attempts in Turkey to gain control of the vessel. The dismissal of his appeal by the court of appeals, was necessitated in order to uphold the dignity and authority of our judicial system.

Contrary to the assertions of petitioners, this Court has upheld just such a dismissal of an appeal by an appellant who is in contempt of a lower court's orders. In National Union of Marine Cooks & Stewards v. Arnold, 348 U.S. 37, 75 S.Ct. 92, 99 L.Ed. 46 (1954), this Court upheld as reasonable the dismissal by the Washington Supreme Court of the appeal of an appellant in contempt of an order issued by the trial court. It was held that such a dismissal was not a violation of either the due process or the equal protection

clauses of the Constitution.

This Court has also upheld the dismissal of an appeal by a prisoner who had escaped and become a fugitive from justice at the time of his appeal. In Molinaro v. New Jersey, 396 U.S. 365, 366, 90 S.Ct. 498, 24 L.Ed. 2d 586 (1970), the Court reasoned that the prisoner's escape "disentitles the defendant to call upon the resources of the Court for determination of his claims." The same reason has been applied in appellate dismissal of civil claims by prisoners who have escaped, Broadway v. City of Montgomery, 530 F.2d 657 (5th Cir. 1976) and Shaw v. Estelle, 542 F.2d 954 (5th Cir. 1976).

Not only is the dismissal of the appeal by the court of appeals in this case not in conflict with any case of

the Supreme Court or of the other courts of appeals, it is in harmony with the law generally in this country. This view is reflected in 17 Am. Jur. 2d, Contempt §226, p. 578:

> Under the court's inherent power to ignore the demands of litigants who persist in defying the legal orders and processes of the jurisdiction, the court may dismiss an appeal by a person who stands in contempt of court in the proceeding in which he seeks to take an appeal.

That this is the view of the majority of courts, see the annotation on this point in 49 ALR 2d 1429.

Because the petitioners have failed to demonstrate that the decision of the court of appeals is in conflict with any decision of this Court or of any other

court or that it was a departure from the accepted and usual course of judicial proceedings or involves an important question of federal law which should be settled by this Court, Rule 10, Supreme Court Rules, this Court should deny the petition of one who stands in open contempt of the orders of lower federal courts.

II. The dismissal of petitioner Zita's appeal because she was only a nominal party presents no issue warranting a grant of certiorari.

After the court of appeals dismissed petitioner Dundar's appeal by reason of his refusal to purge himself of contempt, it made a factual determination that petitioner Zita was only a nominal party and not the real party in interest and dismissed her appeal as well. This was supported by the record including her testimony that if she has

any interest in the yacht that she was only a "paper figure" on behalf of Dundar. No reasons have been given in petitioners' brief as to why this Court should grant a writ based on an admittedly factual dispute resolved against the petitioner. See Rule 10, Supreme Court Rules.

Zita has no grounds independent of those asserted by Dundar for the writ to be granted. In fact if her appeal were granted and later remanded to the court of appeals, an irreconcilable conflict would be presented to that court in that the dispute over title to the vessel ERSAN would have been resolved in favor of Ersan Resources against petitioner Dundar, the real party in interest. In such case if Zita had any interest as a "titular owner" it would be only for the

benefit of Ersan Resources, not Dundar. There are therefore no compelling reasons for this Court to grant a writ for Zita.

## CONCLUSION

A petition for a writ of certiorari will be granted "only when there are special and important reasons therefor." Rule 10, Supreme Court Rules. Petitioners have shown no conflicts with other cases nor any other special or important reasons for granting the writ herein. The decision below of the court of appeals to uphold the dignity and respect of the U.S. judicial system is consistent with cases in this Court and generally in this country.

Therefore it is respectfully requested that this Court deny the petition for writ of certiorari requested by each of the petitioners.

RESPECTFULLY SUBMITTED,
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